

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Petition of Smith Bagley, Inc.)
For Designation as an Eligible)
Telecommunications Carrier)

CC Docket No. 96-45

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OFFICE OF THE SECRETARY

**COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Comments in the above-captioned proceeding in support of Smith Bagley, Inc.'s ("SBI") petition seeking designation by the Commission as an eligible telecommunications carrier.

A. Introduction

Recently, the Commission sought comments on the obstacles to providing wireless telecommunications service to Indian Reservations.² CTIA filed comments in that proceeding supporting the Commission's efforts to identify both the obstacles and possible solutions to providing affordable telephone service for Indian Americans on Reservations. CTIA indicated that for wireless carriers, the most significant obstacle to offering basic telecommunications service is the Commission's present implementation

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (CMRS) providers and manufacturers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² *Public Notice*, Office of Communications Business Opportunities, DA 99-430, (March 2, 1999) FCC To Hold Second Public Hearing In Series On Telephone Service For Indians On Reservations; Set For March 23 In Chandler, Arizona.

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of Universal Service support mechanisms. With the appropriate Universal Service support, wireless carriers may provide telecommunications service at reasonable rates to Indian Reservations. CTIA indicated that the FCC has the authority to: 1) grant eligible telecommunications carrier ("ETC") status to wireless carriers for receipt of Universal Service funds for providing service on Indian Reservations, and 2) provide for timely subsidy payments.

On June 2, 1999, SBI submitted a petition seeking designation as an ETC for those parts of its service area in Arizona and New Mexico that encompass federally reserved Native American lands.³ Consistent with CTIA's position in earlier comments, CTIA supports SBI's petition, which demonstrates that SBI meets the requirements for designation as an ETC. Furthermore, as a Commercial Mobile Radio Service ("CMRS") provider, SBI is not subject to state commission regulation to the extent it provides service to federally reserved Native American lands.⁴

B. The Commission Has The Authority To Grant ETC Status To CMRS Carriers To Facilitate Wireless Telecommunications Services On Indian Reservations

Universal Service support is only available for eligible telecommunications carriers as designated pursuant to section 214(e).⁵ Section 214(e) provides for the designation of ETC status by State commissions and by the FCC.⁶ Pursuant to Section 214(e)(2), state commissions grant ETC status to common carriers for service areas designated by the

³ *Public Notice*, Common Carrier Bureau, DA No. 99-1331, (July 6, 1999), Petition of Smith Bagley, Inc. For Designation As An Eligible Telecommunications Carrier.

⁴ Smith Bagley, Inc., Petition for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. Section 214(e)(6), FCC 97-419 (filed June 2, 1999).

⁵ Communications Act of 1934, Section 254(e).

state.⁷ Pursuant to Section 214(e)(3), unserved areas that request services supported by Federal Universal Service support may receive such services from an ETC designated by the FCC, with respect to interstate services, or by a State commission, with respect to intrastate services.⁸

The SBI Petition demonstrates that SBI satisfies each of these requirements. Many Indian reservations are unserved areas because few, if any, common carriers will provide basic telecommunications services. Wireless service areas are licensed without respect to state boundaries, and often are interstate in scope. For example, SBI's licensed coverage area includes portions of Arizona and New Mexico.⁹ Furthermore, the interstate nature of wireless calling and service areas have been documented by the Commission's actions, as well as in numerous CMRS proceedings. The Communications Act of 1934 clearly indicates that the FCC has the authority to designate an ETC for interstate services for unserved communities.¹⁰

Since the FCC has the authority to grant ETC status to wireless carriers for service to Indian Reservations, the Commission's failure to do so exacerbates the lack of basic telecommunications services in Indian country. As both CTIA and Western Wireless have noted in previous comments, cost recovery is key to facilitating the

⁶ Communications Act of 1934, Section 214(e)(1)&(2).

⁷ Communications Act of 1934, Section 214(e)(2).

⁸ Communications Act of 1934, Section 214(e)(3).

⁹ SBI is the A Band cellular carrier in the Arizona 3 RSA. SBI is a licensed A Band cellular provider in substantial areas within the New Mexico 1 and 3 RSAs.

¹⁰ Communications Act of 1934, Section 214(e)(3).

provision of wireless telecommunications services on Indian Reservations.¹¹ The absence of wireless service is evidence that the delivery of wireless telephone services at affordable rates is not economical without Universal Service support. Congress has provided authority to the Commission to alleviate the constraints that inhibit the provision of service in high cost, unserved areas. The Commission must exercise that authority commensurate with its policy goals of removing obstacles to service on Indian Reservations.

C. The Challenges to Providing Wireless Telecommunications Service to Indian Reservations Are Cost of Service and Lack of Cost Recovery

Large tracts of thinly populated and rural areas characterize many Reservations.¹² The Department of the Interior ("DOI") publishes the acreage, by state, of lands under the jurisdiction of the Bureau of Indian Affairs. As of December 31, 1996, the total acreage of tribal lands in the various states was 45,266,584.28 square acres. Arizona and New Mexico combined have over 27 million acres of tribal lands, *i.e.*, **Arizona** (20,370,974.73), **New Mexico** (7,500,567.57).¹³ According to the 1990 Census of Population, 170,181 persons constituted the total American Indian population living in

¹¹ See, Comments of the Cellular Telecommunications Industry Association, BO Docket No. 99-11, filed June 28, 1999. See, Western Wireless Corporation, Testimony on S.401, "To Provide for Business Development and Trade Promotion for Native Americans," May 6, 1999.

¹² See Department of Interior Lands Under Jurisdiction of the Bureau of Indian Affairs, as of December 31, 1996; See, U.S. Bureau of Census, 1990 Census Population, American Indian, Eskimo, and Aleut Population, Table No. 51.

¹³ Id.

Arizona and New Mexico on Reservations and Trust Lands and American Indian Tribes with 5,000 or more persons.¹⁴

SBI's operating network covers almost all of the Navajo, Hopi, Apache and Zuni reservations. The population density of these Indian Reservations is approximately six people in each square mile covered by SBI's service area.¹⁵ Given these numbers, it is clear that Native Americans in SBI's license area live in remote areas that are unserved by traditional wired telephony service.

Providing wireless telecommunication services to so few people over vast areas of land is costly. Chairman Kennard acknowledged this fact during the FCC's January 29, 1999, hearing on this issue. He aptly noted the beneficial role that wireless service could provide for increasing penetration rates for affordable basic telephone services:

We can't just use the traditional ways and the traditional solutions that we've seen. We know, because of the large, vast areas in Indian country, that it's going to be prohibitively expensive to put in telephones in the traditional ways. But we have technology. We have satellites. We have cellular phones. There's got to be a way we can bridge between the two and move forward.¹⁶

There is little disagreement that the 30-50% penetration rates of basic telephone service on Indian Reservations as compared with the 93% of American homes with telephones must be remedied. As Chairman Kennard has recognized, cost is a prominent

¹⁴ The Navajo population of Utah was included in one of the Census Bureau Tables. The above figure was derived by adding the total number of American Indians, Eskimos, and Aleuts on Indian Reservations and Trust Lands of Arizona and New Mexico, and then subtracting out the Navajo population of Utah, shown on Table 34 to be 29,000 persons. See, U.S. Bureau of Census, 1990 Census Population, American Indian, Eskimo, and Aleut Population, Table Nos. 51 & 34.

¹⁵ SBI Petition at page 4.

¹⁶ Chairman William Kennard, Public Hearing, January 29, 1999, Albuquerque, New Mexico.

factor and wireless technologies may provide a more cost-effective solution. Despite the fact that wireless services may provide a more economical alternative in high cost service areas, cost recovery is still a significant factor in determining if a wireless company will attempt to provide basic telecommunications service to remote areas with so few consumers. In recent testimony on Senate bill S.401, which addresses business development and trade promotion for Native Americans, Western Wireless Corporation indicated that “the challenges to delivery of telecommunications service to Indian Reservations are rooted in the cost of providing service and the lack of a cost recovery mechanism which allows competitive carriers to provide affordable telecommunications service.”¹⁷

D. Universal Service Support Must Be Paid In A Timely Manner

SBI must receive Universal Service support in a timely manner if it is to offer affordable telecommunications services to Indian Reservations within its licensed area. In some cases, support payments to carriers have been as much as two years in arrears. Such delays are unacceptable and jeopardize a carrier’s ability to continue to offer service in high cost areas. As a matter of policy and consistent with the FCC’s goals to remove obstacles to telecommunications service on Indian reservations, the Commission must ensure timely payment so that carriers may have confidence in the program and be able to plan for the rollout of services to unserved communities. Accordingly, the FCC should reexamine its payment processes in order to ensure timely payment of Universal Service support.

¹⁷ Western Wireless Corporation, Testimony on S.401, “To Provide for Business Development and Trade Promotion for Native Americans,” May 6, 1999.

E. Conclusion

For the foregoing reasons, the Commission should grant ETC status to SBI and other wireless telecommunications carriers who seek the opportunity to use wireless technology to offer basic telecommunications services to Indian Reservations at affordable rates.

Respectfully submitted,



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